

Are you really my twin? Assessing Invention Similarity in Patent Families

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Comment by Christian Helmers

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Overview

- Important and underresearched topic!
- Widespread use of equivalents in research for different purposes
- Focus here: do equivalents represent the **same property rights** across jurisdictions?
- Relevant for some of the ways in which equivalents have been used in research
- But potential broader insights on national character of patent rights

Broader relevance

Appl No	Prod No	Patent No	Patent Expiration	Drug Substance Claim	Drug Product Claim
N021588	001	5521184	Jan 4, 2015	Y	Y
N021588	001	5521184*PED	Jul 4, 2015		
N021588	001	6894051	May 23, 2019	Y	Y
N021588	001	6894051*PED	Nov 23, 2019		
N021588	001	6958335	Dec 19, 2021		
N021588	001	6958335*PED	Jun 19, 2022		
N021588	001	7544799	Jan 16, 2019	Y	Y
N021588	001	7544799*PED	Jul 16, 2019		
N021588	001	RE43932	Jan 16, 2019	Y	Y
N021588	001	RE43932*PED	Jul 16, 2019		

A few questions:

- (1) Is a single patent the 'correct' unit of analysis?
 - What is being protected?
 - Same outcome can be achieved in different ways
- (2) Do claims differ at the time of filing?
 - PPH conditional on **grant** elsewhere
 - PPH applicant knows 'identical claim' requirement ex ante
 - Selection into PPH could affect algorithm since trained using PPH
- (3) To what extent do claims change during examination?
 - Grant not a binary decision
- (4) To what extent do claims change after grant (post-grant-review, litigation)?

What are the economics of the underlying decisions?

Section 101 and Medical Diagnostics: PTO and Applicant Behavior

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Overview

- Important topic!
- Patent eligibility at the core of the patent system
- Data suggest strong (short-term) effect of court decisions on 101 rejections and abandonment
- Research question: impact on patent filings (and underlying innovation)?

Empirics – focus on short-term change

Figure 2: Share of Abandoned Applications with a 101 SM rejection in the last office action pre- Abandonment

